might be, people are entitled to protection. The sooner the people of this country quit letting themselves be fooled into believing that this rioting is being done on the basis of civil equality and not upon the basis of sheer desire to perform illegal and unlawful acts, both with respect to the persons of the people and their property, the sooner they will return this country to a course of lawfulness.

I have praised our police officers, and I say again, as I have said on the floor of the Senate before, that police officers today are the only people in the United States who stand between us and anarchy. The individual citizen had better start assuming his responsibility in this respect in the support of the police and in the support of lawfulness. The police should have the means and the authority of stopping unlawfulness wherever it may occur, and under whatever circumstances.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961—CLOTURE MOTION

The Senate resumed the consideration of the bill (H.R. 11380) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes.

Mr. ALLOTT. Mr. President, it had been my hope that the Senate Judiciary Committee could report Senate Joint Resolution 185, sponsored by Senator DIRKSEN and others, including the senior Senator from Colorado. It seems, however, that a small group would like to prevent the Senate from considering that measure or any similar measure this year.

Mr. President, I should like to say, since I have been the signer of many cloture motions in behalf of civil rights, that I have also signed the present cloture motion, because I do not believe any Senators have a right to indefinitely keep the Senator from Colorado or any other Senator from voting on the issue before the Senate.

In this respect I agree with and concur wholeheartedly in the perhaps caustic but very brilliant remarks recently made on the floor by the distinguished senior Senator from Vermont [Mr. AIKEN].

That abhorrent, arch-reactionary device known as the filibuster has been liberally employed—and the pun is intended—to defeat Senate action on amendment No. 1215 or any other measure which would overturn or delay the full effect of the Supreme Court decisions in Reynolds against Sims and the related cases.

Senate Joint Resolution 185, as Senators know, would propose a constitutional amendment to allow States to recognize factors other than strictly the distribution of population in apportioning one house of a bicameral legislature. Amendment No. 1215, sponsored by both the majority leader and minority leader, would place a moratorium on court consideration of the question of apportionment. If adopted, it would give the Congress and the States time to fully consider and debate the merits of such proposals as that embodied in Senate Joint Resolution 185. It is my hope that some such constitutional amendment would be adopted; but even if it were not, the proposal now being considered would allow the States time to comply with the Supreme Court pronouncements on apportionment in an orderly fashion, rather than doing so in unseemly haste, under the gun.

I have said that I hope a constitutional amendment would be adopted. I am in vigorous disagreement with the Supreme Court decisions on legislative apportionment, and I will have more to say about that a little later. But I would prefer to see a change to the Constitution itself, rather than simply a congressional withdrawal of jurisdiction from the courts, effective immediately and forever after, as embodied, for example, in the Tuck bill, House Resolution 845, recently passed by the House. My opposition to this method of meeting the problem does not stem from any question as to the constitutionality of the Tuck approach, although the Tuck bill has been attacked on those grounds. Ex parte McCardle, decided in 1869, should be answer enough to those who say the Congress lacks power under the Constitution to withdraw jurisdiction from the courts. And certainly Senators are familiar with more recent legislative withdrawals of jurisdiction, and Supreme Court concurrence that this was a valid exercise of the legislative power under the Constitution. Probably the most notable example in recent history is the Norris-La Guardia Act, which provided that no Federal court would have jurisdiction to issue injunctions in labor dispute cases.

If this is not a clear case of withdrawal of authority of Federal courts, I do not know what a withdrawal is. Those who say that a delay, as provided in amendment No. 1215, is unconstitutional, are really taking a far tack to the right—or perhaps I should say to the left.

No, I do not question the constitutionality of the Tuck bill, although I do wonder whether the Supreme Court as presently constituted would follow the precedent I have mentioned. But I do believe that a constitutional amendment would be a surer way to accomplish the end we seek, and would gain greater acceptance by the public—which, after all, is the soundest basis which a law can have.

As to my reasons for opposing the Supreme Court decisions in the apportionment cases:

One of the strongest points of our American form of government, perhaps the real genius of the framers of the Constitution, lies in the division of power embodied therein. And I include in that phrase not only the division among the three branches of the Federal Government, but between the Federal Government and the States. The 10th amendment, a part of the Bill of Rights, states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Supreme Court, in the recent cases concerning apportionment of State legislatures, has transgressed on the powers reserved to the States under the 10th amendment. In doing so, it has demonstrated remarkably careless scholarship. As Justice Harlan phrased it in his dissent to those cases:

Had the Court paused to probe more deeply into the matter, it would have found that the equal protection clause was never intended to inhibit the States in choosing any democratic method they pleased for the apportionment of their legislatures. This is shown by the language of the 14th amendment taken as a whole, by the understanding of those who proposed and ratified it, and by the political practices of the States at the time the amendment was adopted. It is confirmed by numerous State and congressional actions since the adoption of the 14th amendment, and by the common understanding of the amendment as evidenced by subsequent constitutional amendments and decisions of this Court before *Baker* v. *Carr*—made an abrupt break with the past in 1962.

The failure of the Court to consider any of these matters cannot be excused or explained by any concept of "developing" constitutionalism. It is meaningless to speak of constitutional "development" when both the language and history of the controlling provisions of the Constitution are wholly ignored. Since it can, I think, be shown beyond doubt that State legislative apportionments, as such, are wholly free of constitutional limitations, save such as may be imposed by the republican form of government clause (Constitution, art. IV, sec. 4), the Court's action now bringing them within the purview of the 14th amendment amounts to nothing less than an exercise of the amending power by this Court.

I do not know of any stronger statement or any clearer and more concise reasoning that expresses my feelings about the decision in that case.

Further, the Court has injected itself into what is basically a political question, in which it had until recently consistently refused to get involved. As recently as 1948, in MacDougall against Green, the Court said:

It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of Government—makes no such demands on the States.

Mr. Justice Stewart summed up the action of the Court in the recent apportionment cases this way:

What the Court has done is to convert a particular political philosophy into a constitutional rule, binding upon each of the 50 States, from Maine to Hawaii, from Alaska to Texas, without regard and without respect for the many individualized and differentiated characteristics of each State, characteristics stemming from each State's distinct history, distinct geography, distinct distribution of population, and distinct political heritage. My own understanding of the various theories of representative Government is that no one theory has ever commanded unanimous assent among political scientists, historians, or others who have considered the problem. But even if it were

thought that the rule announced today by the Court is, as a matter of political theory, the most desirable general rule which can be devised as a basis for the makeup of the representative assembly of a typical State, I could not join in the fabrication of a constitutional mandate which imports and forever freezes one theory of political thought into our Constitution.

That is exactly what the decision in the Sims case did. I agree thoroughly with Justice Stewart's statement. There may be room for argument on what is, in political fact, the best system of choosing representatives; but I believe that there is no room for argument that the Constitution itself, including the 14th amendment taken as a whole, does not require—nor was it believed to, when it was adopted—absolute equality in the manner now required by the Supreme Court.

Justice Harlan also discusses the political ramifications when the judiciary gets involved in the question of apportionment. He speaks of the difficulties which courts are likely to encounter in this field, and says:

Generalities cannot obscure the cold truth that cases of this type are not amenable to the development of judicial standards. No set of standards can guide a court which has to decide how many legislative districts a State shall have, or what the shape of the districts shall be, or where to draw a particular district line. No judicially manageable standard can determine whether a State should have single-member districts or multi-member districts or some combination of both. No such standard can control the balance between keeping up with population shifts and having stable districts. In all these respects, the courts will be called upon to make particular decisions with respect to which a principle of equally populated districts will be of no assistance whatsoever. Quite obviously, there are limitless possibilities for districting consistent with such a principle. Nor can these problems be avoided by judicial reliance on legislative judgments so far as possible. Reshaping or combining one or two districts, or modifying just a few district lines, is no less a matter of choosing among many possible solutions, with varying political consequences, than reapportionment broadside.

While the amendment which I have sponsored with Senator DIRKSEN and others does not require States to use factors other than population in apportioning one house of their legislatures, but simply leaves them free to do so, I can see good argument for taking such other factors into account. I have no doubt that an intolerant majority can be fully as oppressive as a dictatorship, when there is no restriction placed on that majority. And I have no illusions that all values worth protecting are fully protected in the Constitution, particularly if we permit the Constitution to be changed by judicial fiat, without full and adequate debate. Again, our system of checks and balances among the branches of Government and between Federal and State Governments affords protection—political protection—to a minority who otherwise might be completely submerged and run over roughshod were there no such checks.

I have heard asked on the floor of the Senate, time and time again, the question: "How can you justify districts in which there are so few people? Land does not vote; buildings do not vote; trees do not vote. Therefore, the principle should be one vote for one man."

The great majority of the legislatures in this country have been so formed over a period of years, and the fact that the different economic positions, different geographical positions, and different interests of the people are recognized in the two-way division of the Houses has served to balance the legislatures throughout their history.

Everyone seems to ignore the fact that although we took our basic principles from the English parliamentary system, our fathers who wrote the Constitution knew that they did not want any system of peerage in this country. So they wisely framed a government under which we have a system of checks and balances and under which the Senate is elected upon a different basis, both geographically and otherwise, than the House of Representatives.

In the August issue of Fortune magazine there is an article dealing with this question, and I ask unanimous consent to have this article printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ALLOTT. Mr. President, the basic point which the author of that article makes is that the majority of the Supreme Court has ignored the fact that our forefathers, in drafting the Constitution, were fully aware of the possibility of pure democracy but made a conscious choice in favor of representative, republican government instead. He argues that Chief Justice Warren, in his opinion written for the majority, confuses qualitative and quantitative values, choosing democracy—quantity in election—as the controlling factor, thus overturning the intent of the framers of the Constitution, who were concerned with quality of representation in a republican government. The Senate was seen, in the various States as well as in the Federal Government, as a check on the House—that is, on the body chosen by purely democratic means.

Incidentally, Earl Warren apparently considered this a political question when he was Governor of California. He opposed a strict one-man, one-vote theory, and opposed reapportioning the State senate on a strictly population basis in these words:

Many * * * counties are far more important in the life of the State than their population bears to the entire population of the State. It is for this reason that I have never been in favor of restricting their representation in the senate to a strictly population basis. It is for the same reason that the Founding Fathers of our country gave balanced representation to the States of the Union, equal representation in one house and proportionate representation based on population in the other. Moves have been made to upset the balanced representation in our State, even though it has served us well and is strictly in accord with American tradition and the pattern of our National Government. There was a time when [this State] was completely dominated by boss rule. * * * Any weakening of the laws would invite a return of boss rule, which we are now happily rid of.

Specifically, Mr. President, I am disturbed about the Colorado reapportionment case. I am not as familiar with the situation in the other States where reapportionment has been decreed, but in Colorado we had a constitutional provision which had been properly implemented by the legislature, the constitutional amendment having been adopted by a majority vote in every one of our 63 counties—on a one-man, one-vote basis—including those counties which, according to the Supreme Court, are "under represented." I believe that the Colorado plan struck a reasonable balance between urban and rural interests, with neither group having a clear, overriding balance of power.

So that the RECORD may be complete, let me state that in 1962 there was an initiated law, which can be done under the constitution and statutes of the State of Colorado, entitled "Federal Plan for Reapportionment." The year 1962 was a year for a general election, so that everyone who voted had an opportunity to vote on it. It was adopted by a vote of 305,700 to 172,725. In that vote, every county in the State carried the amendment. That same year, on the same ballot, there was also an amendment entitled "No. 8," which conformed to the present decision of the Supreme Court—the one man, one vote. It was defeated by a vote of 311,749 to 149,822.

What I am saying is that, in 1962, the people of Colorado, on an initiated law, in every single county in the State, turned down the theory—which the Supreme Court has arrogated to itself under the Sims decision—by a vote of over 2 to 1; and by a vote, almost, of 2 to 1 adopted the principle that our State has maintained throughout its life since 1876.

(At this point Mr. SALINGER took the chair as Presiding Officer.)

Mr. ALLOTT. Mr. President, to quote again Mr. Justice Stewart, in discussing the Colorado situation:

In the Colorado House, the majority unquestionably rules supreme, with the population factor untempered by other considerations. In the senate rural minorities do not have effective control, and therefore do not have even a veto power over the will of the urban majorities. It is true that, as a matter of theoretical arithmetic—

I might say that this theoretical arithmetic has shown up on charts scattered all over the desks of Senators in the Chamber at the present moment—

a minority of 36 percent of the voters could elect a majority of the senate, but this percentage has no real meaning in terms of the legislative process. Under the Colorado plan, no possible combination of Colorado senators from rural districts, even assuming arguendo that they would vote as a bloc, could control the senate. To arrive at the 36-percent figure, one must include with the rural districts a substantial number of urban districts, districts with substantially dissimilar interests. There is absolutely no reason to assume that this theoretical majority would ever vote together on any issue so as to thwart the wishes of the majority of the voters of Colorado. Indeed, when we eschew the world of numbers, and look to the real world of effective representation, the simple fact of the matter is that Colorado's three metro-

politan areas: Denver, Pueblo, and Colorado Springs, elect a majority of the senate.

To this I would add that when the State is apportioned solely on population, we find that the Denver metropolitan area alone, composed of Denver, Adams, Arapahoe, Boulder, and Jefferson Counties, can impose its wishes on the whole of the State.

Just think of that, Mr. President. The city and county of Denver, and the counties of Adams, Arapahoe, Boulder, and Jefferson which together comprise Metropolitan Denver, can impose their wishes on the whole State.

This area contains 53 percent of the State's population, although it accounts for only 3.5 percent of the area of the State. The vote of the city and county of Denver alone is sufficient to offset 55 other counties' votes, out of a total of 63 counties in the State. This situation could lead to absurd results. Assume that a new agricultural facility is planned for the State—perhaps a retraining school for agriculture workers. Is 16th and California Streets, in downtown Denver, the best location? Obviously not, but Metropolitan Denver could force that decision on the State.

I do not really believe that legislators from the urban areas would insist on this type of legislation, but I do believe that the hypothesis demonstrates what the opponents of amendment No. 1215 have ignored. Those opponents cry loudly that we are now in a position to break the stranglehold which the rural areas have imposed on State legislatures. They assume that rural legislators will ignore the needs of urban areas, and at the same time they seem to assume that urban legislators will be somehow fairer and wiser in treating all the problems of all the people in a State.

Colorado's constitutional provision which was struck down by the Supreme Court, and which, I repeat, was adopted by a majority of the voters in every county, was carefully drafted to provide the balance which is vital to the protection of the conflicting interests found in every region. John Adams, in 1789, put it this way:

> The essence of a free government consists in an effectual control of rivalries.

Colorado's plan failed the Supreme Court's test of one man, one vote. But it was the solution which was worked out by the people of Colorado, adopted in free elections, and enshrined in their constitution. Further, they had the right to change their plan whenever a majority of voters in the State decided it was desirable to do so. With the initiative and referendum in Colorado, the people do not lack protection from a malapportioned legislature; it simply is not possible for "the bad guys" to perpetuate themselves in office forever, with this kind of protection available to the voters.

It is for these reasons that I shall work as vigorously as possible to overturn the Supreme Court decisions with a constitutional amendment and return the matter to the States, where it has resided for 175 years, and where I believe it belongs. It is for these reasons, also, that I urge adoption of amendment No. 1215, offered by the distinguished majority and minority leaders.

Mr. President, I yield the floor.

EXHIBIT 1

THE SUPREME COURT AND THE REPUBLIC

(By Felix Morley)

In his final opinion as a Supreme Court Justice, delivered from that bench on March 26, 1962, Felix Frankfurter quietly observed that: "What is actually asked of the Court in this case is to choose * * * among competing theories of political philosophy."

The case was *Baker* v. *Carr*, establishing jurisdiction for Federal courts over the system of representation in the general assembly of Tennessee, and, in effect, ordering that representation in the lower house be made proportionate to the geographic spread of population. Justice Frankfurter, in his monumental dissent, pointed out that arithmetical equality in voting "was not the system chosen by the Constitution" and "is not predominantly practised by the States today." The case, he concluded, "is of that class of political controversy which, by the nature of its subject, is unfit for Federal judicial action."

That, however, was not the majority opinion. And the theory of judicial control over legislative composition has now been carried much further by the Supreme Court's judgment of June 15, on six similar cases appealed from Alabama, Colorado, Delaware, Maryland, New York, and Virginia. In all of these Justice Harlan, associated with Frankfurter in the Tennessee dissent, again denies validity to the argument that the legislatures of these States "are apportioned in ways that violate the Federal Constitution."

The progression to the current cases from that of 1962 is noteworthy. In the Tennessee ruling the Court established its right to intervene, justifying this by the "invidious discrimination" among electoral districts of the lower house with very unequal population. In the current cases the right of intervention is assumed. Local efforts to rectify imbalance without profound disturbance of traditional patterns are found inadequate. And not just one but both houses of the affected State legislatures are told that they must reapportion on the principle of "one person, one vote."

With this decision, which demands reorganization of legislative arrangements in almost every State, the import of Justice Frankfurter's prescient observation becomes more clear. What the Court is doing is to impose on the States a new conception of representative government, far more egalitarian than that established by the Founding Fathers. The effect is no less revolutionary because ordained by an agency—the Federal judiciary—not customarily associated with profound political upheavals.

Nor is it to be expected that the resultant tremors will be confined to State capitols and local political organizations. In *Wesberry* v. *Sanders* the Supreme Court decided, some months ago, that "our Constitution's plain objective" is to provide "equal representation for equal numbers of people." This goes for the Federal House of Representatives as clearly as for the State legislatures. And if the U.S. Senate is safeguarded by very specific constitutional guarantees the current decisions none the less imply that its system of representation—two Senators alike from sparsely and heavily populated States—is somehow un-American and undesirable.

THE CHOICE

The "competing theories of political philosophy" to which Justice Frankfurter referred are that of a federal republic, on the one hand, and that of a unitary democracy on the other. "Totalitarian" would be a more descriptive adjective than unitary, except that it has acquired a strongly derogatory flavor. The point is that the opposite to the division of governmental power essential for a federal republic is the concentration of governmental power necessary to make a democracy operative.

Democracy, in its political sense of unqualified majority rule, upholds the principle of "winner takes all." Carried to a logical conclusion it means that minorities have no rights which "the will of the people" may not override. Vox populi, vox dei, as the old Romans said. The trouble there was that ambitious generals soon saw themselves as spokesmen of all the people and therefore as godlike rulers. Thus representative government, lacking careful institutional restraint, soon ceased to be democratic even as it claimed that objective. We see the same phenomenon operating in Communist countries today, called democratic people's republics by their dictators on the assumption that they are the only legitimate interpreters of the popular will.

The Greeks, for a brief but glorious period, were able to avoid this political degeneration, simply by stressing the excellence for which they were taught to strive in every aspect of life. Government should be representative, serving the interests of all, impartially. But those who conduct it should be, in every sense, an "elect" group, chosen by a very limited suffrage.

The authors of the Constitution, for the most part good classical scholars, paid close attention to the Greek and Roman precedents. While firm believers in representative government, they found democracy, in its political as contrasted with its social sense, abhorrent. The word is not mentioned in the Constitution and became especially mistrusted when the doctrine of absolute equality led to the Reign of Terror in France. This prompted the famous aphorism of John Adams, our second President: "There never was a democracy that did not commit suicide."

THE MEANING OF FEDERALISM

In fact, it was impossible for the Government of the United States, in origin, to be really democratic. It had to take Federal form to achieve the union of the Thirteen Originally independent States. The essence of federalism is the reservation to its component parts of certain defined powers, which of itself involves a limitation of the powers of the general government. No matter what their collective desires, the people of a federation are not entitled to decide matters reserved to the authority of the constituent states. In a federation, majority opinion is therefore sometimes ineffective, unless it coincides with the public opinion of autonomous localities.

That much is true of any federation, but in our own the curbing of democracy was originally carried further. Some of these curbs on popular control have been removed, but others of great significance remain. Congress, for instance, "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Here is a clear contraction of democracy but not of representative government, which serves to protect those very minorities that democracy is disposed to crush. Under our system an opinionated religious sect, like the Amish is safeguarded not by sending representatives to Congress but simply because the conventional majority there is denied the democratic power to suppress.

While deeply interested in political personalities and detail, most contemporary Americans are far more ignorant of political theory than were their forefathers. This presumably explains why the present Supreme Court can effectively suggest that representative government is necessarily democratic, and that democracy is necessarily representative. Yet illustrations of the

important difference between the two are all around us. As the electoral system has developed it will be the rule, not the exception, in November for a simple majority, or even a plurality, of the voters in each State to decide the entire electoral vote of that State. This accords with the democratic principle of "winner takes all." But it is difficult to find anything representative in the procedure.

There are many indications that the objective of some Americans today is to substitute pure democracy for our traditional system of representative government. One way to accomplish this is to take all intelligent content out of the technical political term "democracy," and to make it a "good" word surrounded with a mystique calculated to make people react with spontaneous favor to its utterance. Over the years this has been done. Today it is almost embarrassing to recall that James Madison considered political democracy "incompatible with personal security or the rights of property."

The second way to weaken representative government is to erode the Federal structure by a continuous and progressive centralization of governmental functions. This process, too, was underway long before the day of F.D.R., who probably deserves less credit, or discredit, than he generally receives for the concentration of power in Washington.

But the movement to eliminate the States as sovereign entities is greatly impeded by the fact that local self-government, though often inefficient and not infrequently corrupt, is still generally regarded as preferable to dictation by distant bureaucrats. At many points along the road to socialism the Congress has dug in its heels, showing strong skepticism toward the provision of "bread and circuses," as the old Romans characterized the various new and fair deals by which the unconquerable empire was undermined from within.

A DANGEROUS PRECEDENT

There is, however, an infrequently used device by which the executive may overcome the obstruction of a recalcitrant legislature. It can summon the third arm of government, which is the judiciary, to its aid, and if the judges are compliant, giving fluid interpretation to the laws, representative government may in effect be frustrated. Such a policy is dangerous and a great deal depends on the manner in which it is undertaken. King Charles I of England called on the judiciary to support the divine right of kings, as did Louis XVI a century and a half later in France. In both cases the monarchs were decapitated for their pains.

It is a more subtle and promising tactic to have the judges find legislative obstruction "undemocratic" since the charisma of democracy protects the executive against any charge of arrogance, seems favorable to everybody, and accords with the general sense of justice, in which the judicial profession is assumed to be expert. And though the Supreme Court is, ironically, the most undemocratic of our institutions it is working assidiously in favor of more democratic representation.

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." So says Chief Justice Warren in his controlling opinion on the latest reapportionment cases. But the right to vote freely is not at issue in any of these cases. The issue is merely whether there is improper discrimination when all votes are not equally weighted on a nosecount basis. And that question does not affect "the heart" of representative government. Its major concern is quality of representation while that of democratic government is quantity in election. New York was not underrepresented at the Philadelphia Convention of 1787 because it had only one delegate—Alexander Hamilton—to sign the Constitution, whereas Delaware had five, whose names would today be recognized by very few.

"NOT TREES OR ACRES"

Confusion of qualitative and quantitative values, in Chief Justice Warren's opinion of June 15, leads to a tortured reasoning not likely to become more impressive as it is subjected to the test of time. The opinion relies, in large part, on that clause of the 14th amendment which says that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Taking this clause out of context it is laboriously argued that equal protection is denied unless representatives speak for an arithmetically equal number of people. "Legislators," say the current judgment, "represent people, not trees or acres." That is the theory of pure democracy, which reduces individuals to so many faceless integers, to be electronically numbered and herded about like sheep. The theory of representative government is that those who make the laws should consider their constituents not merely in quantity but also in quality. Their interests, too, merit consideration and these include trees, acres, and countless other properties, tangible and intangible. To ignore these manifold interests is to debase human nature.

That is what happens when representative government concentrates wholly on democratic principles. But if it ignores these principles entirely it also ceases to be representative. By the latter mistake the States collectively have invited the further blow to their sovereignty that the Court has now delivered. In many of the local legislatures there has been no redistricting for decades, so that rural areas continue to dominate the State capitols in a manner palpably unfair to the swollen metropolitan ganglia. Chief Justice Warren points out that "the last apportionment of the Alabama Legislature was based on the 1900 Federal census, despite the requirement of the State constitution that the legislature be reapportioned decennially." Few would deny that the Supreme Court has both the authority and the duty to request a State to observe its own constitutional provisions.

Unfortunately, the decision in regard to Alabama and the five others goes far beyond any such timely admonition. It rules that both houses must be apportioned strictly on the basis of population, asserting that "the fundamental principle of representative government in this country is one of equal representation for equal numbers of people. * * *" If the U.S. Senate seems to refute this dictum it is because that body is a case apart, constituted not on the basis of logic but of compromise at the Constitutional Convention of 1787.

MORE THAN A CONVENIENCE

Compromise between the large and small States certainly played a part in the decision to make representation in the Senate equal for all, while adjusting it to a population ratio in the lower House. But the suggestion that this arrangement was merely a matter of convenience is not sustainable. When the Constitution was drafted many of the State legislatures already had senates formed on a geographical basis, regardless of population. And it was this arrangement that made the eventual equivalence of two Senators from each State in the Union not merely plausible but also logical. As Madison wrote, in No. 62 of the Federalist, "in a compound republic, partaking both of the national and Federal character, the Government ought to be founded on a mixture of the principles of proportional and equal representation."

Nor is it convincing for the Court to say that there is no analogy between the Federal and State governments, and therefore a State senate based on geographic considerations "is impermissible." The Constitution does not concern itself with the organization of State government, except to guarantee that in each case the form shall be "republican." But the record shows that the counties were generally regarded as having the same relation to the States as these would have to the General Government, with senates in both sovereignties serving as "an anchor against popular fluctuations." This is particularly emphasized in No. 63 of the Federalist, where Madison closes six arguments for a distinctive second chamber by saying: "It adds no small weight to all these considerations to recollect that history informs us of no long-lived republic which had not a Senate."

UNHEEDED ADVICE

Madison is discussing all legislative bodies, not just the U.S. Congress, when he argues for an upper house "distinct" and "dissimilar in genius" from the more numerically representative legislative chamber. Then comes a passage that is poignant reading in connection with the Supreme Court's decision of June 15. "This [distinctive senate] is a precaution founded on such clear principles, and now so well understood in the United States, that it would be more than superfluous to enlarge on it."

Since the Founding Fathers are practically ignored, it is scarcely surprising that the Warren opinion pays no attention to the arguments of John Stuart Mill, in his classic essay on "Representative Government." In this, first published in 1861, the reasons for bicameral legislatures based on differing principles are set forth in universal terms. In a passage that might have been written for the Warren court, Mill says: "It is important that no set of persons should, in great affairs, be able even temporarily to make their sic volo [thus I wish] prevail without asking anyone else for his consent." He then argues that the most effective check on legislative blundering is provided when the second chamber is organized on a wholly different principle from that of its opposite number. "One being supposed democratic, the other will naturally be constituted with a view to its being some restraint upon the democracy."

That, of course, is the principle of check and balance underlying bicameralism in the State legislatures as well as in Congress. To strike at that principle in the case of the States is to injure it for the Nation as a whole. With tiresome statistical detail Chief Justice Warren emphasizes that in the Alabama State Senate "members representing 25.1 percent of the people of Alabama" can theoretically control that body. This the Court calls "invidious discrimination." But it is also true that Senators representing only 16.4 percent of the people of the U.S. form a majority of that body. What is invidious for 50 Capitoline geese can scarcely be admirable for the more august gander who cackles across the park from the Supreme Court's majestic home.

A final flaw in the reapportionment policy that has been ordered is that it can never be accurate. In its 1964 opinion the Court takes statistics from the 1960 census to show disparities. But population changes daily. The most meticulous reapportionment during the next few months would be outdated when made, and continuously more so until replaced after the 1970 census.

So the assumption that "dilution" of a vote is unconstitutional leads on to the unanswerable question: How much dilution? As population mounts it would appear that the condition of the country steadily deteriorates. In the first Congress no Member of the House represented more than 30,000 people. Currently, with many more Representatives, the

average is 1 for approximately 425,000. The only way to stop this progressive "debasement" would be to cut off all immigration and then exactly equalize the numbers of births and deaths.

NOT A RIGHT BUT A PRIVILEGE

Reluctantly the Court concedes that "it may not be possible to draw congressional districts with mathematical precision." And this is fortunate, since if it were possible the most dangerous flaw in the argument might be concealed by feasibility. Representative government, as Mill so cogently argued a century ago, is not a right but a privilege, successful only when voters are "willing and able to fulfill the duties and discharge the functions which it imposes on them." To emphasize his point Mill was intentionally provocative. He would exclude from the franchise not only the illiterate and incompetent but also all who receive any form of relief from public funds. He also advocated multiple voting by university graduates, on the dubious assumption that higher education would have improved their minds. "It is not useful, but hurtful, that the Constitution of the country should declare ignorance to be entitled to as much political power as knowledge."

A SUPERFLUOUS COURT

Yet this, swinging to the opposite extreme, is precisely what the Supreme Court declares in its strongly egalitarian ruling. Equality means, literally, deficient in quality and to eliminate quality has never been a dominant American objective, in the choosing of legislative bodies or in any other function. Though "all men are created equal," in the sense of being entitled to equal social consideration and legal protection, they do not remain equal in their abilities and accomplishment. Equal opportunity has never implied that competition is undesirable. The customs and laws of the country have always encouraged individuals to "get ahead"—which means to become unequal.

Justice Harlan has the importance of excellence in mind when he warns that the reapportionment edicts have "portents for our society and the Court itself which should be recognized." We shall have a very different society if a dead level of mediocrity is successfully established as the national image. If the Federal structure is destroyed to gain this objective, there will no longer be any function for the Supreme Court. Its only constitutional purpose is to maintain the delicate balance between the National and State Governments. If the latter lose their autonomy the Court becomes superfluous.

There is no similar organ in the Soviet Union, where totalitarian democracy is triumphant, at the cost of representative government.

Mr. ANDERSON. Mr. President, we are now engaged in a debate which centers on the vital organs of our form of government, and reopens arguments raised and resolved by the men who shaped the Constitution of the United States. The outcome of this debate and the issue which prompted it could, over the years, have a deeper effect on more Americans than the civil rights bill we passed in June. The House of Representatives has passed a bill, the Tuck bill, which would bar the Supreme Court from acting in cases involving the reapportionment of State legislatures. This bill defies the basic principle established by the Founding Fathers that the Supreme Court should exercise the role of final arbiter in disputes of interpretation of our Constitution because it would destroy one of the foundation stones of our Republic.

The Tuck bill, in my opinion, should have been defeated. There were those, however, who believed that the extreme measure passed by the House would force this body to accept some sort of more modest counter to the Supreme Court's decisions on legislative apportionment in the States. This so-called more modest measure took the form of the Dirksen amendment. I am as strongly opposed to the Dirksen amendment—even though some would label it a modest proposal—as I am to the Tuck bill. No hearings were held on the Tuck bill in the House. We have not held hearings in the Senate on the Dirksen amendment, yet we are asked here to attach this disruptive amendment to the foreign aid bill.

If this amendment should become a part of the foreign aid bill and the foreign aid bill be sent to the President, I would rather see the President veto that vital legislation rather than let the Dirksen amendment become the law of the land. The amendment abrogates the principles for which the Founding Fathers labored long and diligently in the Philadelphia Convention of 1787. More than that, it would encourage Congress to foreclose Supreme Court actions in other areas which might be unpopular with an active and influential minority. Even when the Supreme Court in 1954 handed down its momentous decision that there should be desegregation in the public schools, I do not recall that any measure was introduced in Congress to deprive the Supreme Court of the right to rule in such cases. Could it be that this issue has generated so much opposition because reapportionment has such a profound effect on the political power structure?

I find it somewhat surprising that the distinguished Senator from Illinois, who was one of the architects of the civil rights bill, should be the principal architect of this proposal which is nothing else but a civil wrongs bill, because it would deny to many the right of equal representation and does violence to the 14th amendment which was one of the bases for the civil rights bill. There are those who say that the Dirksen amendment accepts the decisions of the Supreme Court that both houses of State legislatures must be apportioned on the basis of population, but merely delays implementation of the rulings. In truth the purpose of the Dirksen amendment is to buy time—time in which it is hoped a constitutional amendment can be adopted that will produce the same results, wholly or partially, as the Tuck bill if it were enacted. In reality, we would wind up in the same leaky boat, nullifying the action of the Supreme Court, but worse, foreclosing future decisions by the Supreme Court in this area of fundamental principle. The Dirksen amendment only delays the day of final judgment for the inequality and injustices which have been the lot of large numbers of Americans for so many decades. Malapportionment will still be with us. I am afraid that millions of our citizens will despair that nothing can be done to erase this blot on our democracy. They will believe that Congress has left them hostage to the whims and will of legislatures which do not accurately respond to their needs.

The number of taxpayer suits that have been filed in recent years and the number of organizations with large memberships which have made this issue a major cause in behalf of good government indicate that we will not be putting the problem to rest. Justice delayed is justice denied and cannot be tolerated.

Just as the Supreme Court was long reluctant to get into this reapportionment question, which Mr. Justice Frankfurter once called a "political thicket," I, too, have been somewhat hesitant. In my State, after the Baker against Carr decision in 1962, a suit was filed in an effort to bring about a reapportionment of the New Mexico House of Representatives on a more equitable population basis. The New Mexico Legislature passed, and the Governor signed, a bill that would have provided for a weighted-vote plan. This law was held unconstitutional by the State court. But over the months I have grown increasingly concerned about the perpetuation of a situation by which 14 percent of the people of New Mexico could elect a majority of members of the State senate. What holds true in New Mexico applies to a more inequitable degree in some States and to a less severe extent in many others.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. ANDERSON. I yield.

Mr. DOUGLAS. The Senator has just made a very significant statement. Do I correctly understand that 14 percent of the population of New Mexico can elect a majority of the Senate or the House?

Mr. ANDERSON. Of the State senate. The figure as to the house is somewhat variable. It has been approximately 27 percent. But 14 percent of the people of our State can elect a majority of the State senate. I believe that is bad. Our State has shifted a great deal in recent years. Some new people have moved in. New industries have been developed. We have had a wonderful class of people come into our State to take part in the atomic energy installations. Those are among the people who would lose their power as voters under this situation.

Mr. DOUGLAS. I have some statistics which indicate that the Albuquerque metropolitan district in 1950 had 146,000 people. In 1960, it had 262,000 people. It had a growth of 80 percent.

Mr. ANDERSON. That is correct. There are other figures which are even more interesting. I came to Albuquerque in about 1917. I was able to go back to work in about 1919, after a little bout with tuberculosis. In the 1920 census, the population of Albuquerque was 15,200, I believe. In 1930, it was about 22,000. In 1940, it was about 36,000. In 1950, it was about 100,000. By 1960, the population was 262,000.

Mr. DOUGLAS. And if we include the metropolitan district, the growth has been even greater.

Mr. ANDERSON. That is correct. This growth has taken place to a very substantial extent, not solely, because of

the development of the atomic industry. The growth of this industry brought a class of citizens to our State which, I would say, is above the national average in its possession of college degrees. There are many men and women with doctors degrees in science.

They are a very intelligent class of people. They become very intelligent voters. Yet, they realize that their vote does not begin to count when compared with the vote of certain other people. It takes about 165 of those very fine citizens to equal the vote of 1 person in some of the other counties in the State.

The 14 percent figure which I gave the Senator from Illinois is the figure for 1960. We have not had a census since then. But if we had an accurate count of the population as of today, the percentage would come down below 13 percent as of 1964. The percentage is dropping very rapidly. It will be down to 12 percent in a very short time, I assume.

Mr. President, there are those who say that this reapportionment issue is in reality a grab for power by the unions or by the city dwellers or that it will benefit the Democratic Party or the Republican Party. I personally do not feel that such a conclusion is justified. Indeed, in my own State, it is certainly difficult to determine which party, if indeed any single party, would reap the greater benefit.

One of the great unknown areas politically in the Nation is the suburbs because they are relatively new phenomena and what the future will bring in terms of political effectiveness cannot be accurately forecast at this time. It is the suburbs which hold the balance of political power in many States, and it is also the suburbs which I believe have a tendency politically to hold opinions which, in fact, represent a cross-section of the country.

Therefore, the argument that fair reapportionment would benefit a particular political party could well be wrong. What I am striving for is not political gain but political justice, and I think this is the intent of the Supreme Court ruling.

Mr. President, intemperate and misinformed critics contend that the Supreme Court of late has been doing violence to the basic principles on which this Nation was created. Some have been so extreme as to suggest that foreign ideologies—whatever that sinister phrase might mean—have come to dominate the Supreme Court. It is a pity that such extremism should receive any measure of favorable response, but it is gratifying that this response is only echoed by a distinct minority.

Throughout the framing of the Constitution delegates from the great State of Virginia took a leading role in fighting for a strong Federal Government. The Virginia delegation to the Constitutional Convention was led by the leading citizen of that State and the leading citizen of the United States as well, George Washington. Included in the delegation were Patrick Henry, Edmund Randolph, James Blair, James Madison, George Mason and others, all of whom left an indelible mark upon the history of this Nation. It is ironic that the State which led the fight for a strong Federal Government and the separation of powers among the legislative, judicial, and executive branches should now be the State whose representative introduced a bill to strip the Supreme Court of its authority to rule on a particular constitutional question. I would hope that this change in attitude exemplified by the Tuck bill is not really representative of the wishes of the citizens of the great State of Virginia.

It is no accident that the process of amending the Constitution of the United States insists that all changes to the Constitution finally be passed on by the people rather than the State legislatures. The attempt to amend the Articles of Confederation had taught by bitter experience that the objection of a single State was sufficient to block the will of all the others. It was evidently necessary that provisions should be made for amendments to the new Constitution with the consent of less than the whole number of States. It was also felt that this same principle ought to be applied in the modifications proposed in the existing instrument, and those who favored a Government responsible to the people directly advocated as a first step in this process the ratification of amendments of the Constitution by the people rather than by the legislatures.

There was an obvious theme of representation based on population running through the Constitutional Convention in Philadelphia.

Madison, an eminent Virginian, to whom we are indebted for his notes on the Philadelphia Convention, expressed his distress with the proposal for equity of votes between the States regardless of size or population. Madison said:

> The prospect of many new States to the westward was another consideration of importance. If they should come into the Union at all, they would come when they contained but few inhabitants. If they should be entitled to vote according to their proportion of inhabitants, all would be right and safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole.

Alexander Hamilton, during the Convention in Philadelphia, voiced his objection to the plan put forward by the small States for equal representation in the Senate.

Hamilton stated:

> Another destructive ingredient in the plan is that equality of suffrage which is so desired by the small States. It is not in human nature that Virginia, and the large States should consent to it; or if they did, that they should long abide by it. It shocks too much all ideas of justice and every human feeling. Bad principles in a government, though slow, are sure in their operation and will gradually destroy it.

For in fact, Mr. President, the original constitutions of 36 of our States provided that representation in both houses of the State legislatures would be based completely, or predominantly, on population. The Founding Fathers "clearly had no intention of establishing a pattern or model for the apportionment of seats in the State legislatures when the system of representation in the Federal Congress was adopted." The Northwest Ordinance adopted in 1787—the same year as the Constitutional Convention met in Philadelphia—provided for the apportionment of seats in territorial legislatures solely on the basis of population. The Northwest Ordinance stated:

> The inhabitants of the said territory shall always be entitled to the benefits * * * of a proportional representation of the people in the legislature.

Thomas Jefferson, a great President and a great Virginian, repeatedly denounced the inequality of representation provided for under the 1776 Constitution. Often he proposed that the State constitutions provide that both houses be apportioned on the basis of population. In 1816, he wrote—I am glad that the Senator from California [Mr. KUCHEL] stated the same quotation a few moments ago—that:

> A government is republican in proportion as every member composing it has his equal voice in the direction of its concerns * * * by representatives chosen by himself.

Three years later, he stated:

> Equal representation is so fundamental a principle in a true republic that no prejudice can justify its violation because the prejudices themselves cannot be justified.

Mr. President, I cite the early history of the Republic only as a way of diminishing and diluting the opinion repeatedly charged that the action of the Supreme Court and the actions of the Congress are not in keeping or have drifted away from the original philosophy upon which this Government was constructed.

Mr. President, it is argued that the States, in establishing for themselves houses of representatives based approximately on population and Senates based on population and other factors, have adhered to the Federal plan as embodied in Congress. This resemblance between the system of representation in the Federal Congress and the apportionment schemes in the States is more superficial than actual. The apportionment of the U.S. Senate covered by the Constitution of the United States was the result of the great compromise. It represented an agreement among sovereign, independent States. After many proposals, it was decided that the sovereign States would approve the Consitution only if their sovereignties were adequately reflected in the Senate of the United States. Counties and cities draw their powers solely from the States and cannot, under any stretch of the imagination, be considered sovereign entities.

A valid argument against little federalism is that each U.S. Senator is more likely to represent, because of political realities, all interests within a State—rural, suburban, urban—so, in fact, he does represent the gross interests of the people of his State; whereas State senators from small political subdivisions of the State have a tendency to represent, with some exceptions, only a narrower interest group.

In 1955, the Commission on Intergovernmental Relations, established by President Eisenhower, submitted its report to the President for transmittal to Congress. The report stated:

Reapportionment should not be thought of solely in terms of a conflict of interests between urban and rural areas. In the long run, the interests of all in an equitable system of representation that will strengthen State government is far more important than any temporary advantage to an area enjoying overrepresentation.

The problem of reapportionment is important, the Commission said, "because legislative neglect of urban communities has led more and more people to look to Washington for more and more of the services and controls they desire." One of the study reports prepared for the Commission makes this very clear:

If States do not give cities their rightful allocation of seats in the legislature, the tendency will be toward direct Federal-municipal dealings. These began in earnest in the early days of the depression. There is only one way to avoid this in the future. It is for the States to take an interest in urban problems, in metropolitan government, in city needs. If they do not do this, the cities will find a path to Washington as they did before, and this time it may be permanent, with the ultimate result that there may be a new government arrangement that will break down the constitutional pattern which has worked so well up to now.

The Commission declared:

One result of State neglect of the reapportionment problem is that urban governments have bypassed the States and made direct cooperative arrangements with the National Government in such fields as housing and urban development, airports, and defense community facilities. Although necessary in some cases, the multiplication of national-local relationships tends to weaken the State's proper control over its own policies and its authority over its own political subdivisions.

Along with other sunshine States—Nevada, California, Arizona, and Florida—New Mexico has had an extremely rapid growth in population and accompanying this change has come a change in the basic economy of our State. Agriculture, mining, and grazing are less dominant in the economy than they were. We have had an influx of relatively highly educated people to staff laboratories and test facilities, and we would hope to attract more of the kinds of activities with which they are associated. Only by keeping our State government and our State legislature in tune with the rapidly changing times can we hope to continue to attract these kinds of people and these kinds of industries. If one analyzes the kinds of people who man these laboratories and test sites, we would find that they are scholars and have been faculty members of some of the major universities in the United States and are therefore issue oriented. To deny this segment of the State's inhabitants the full participation in Government, may be denying the State the knowledge and talent which it needs to develop its capabilities to face great issues. By a more equitable distribution of representation in the State legislature, the State may attract qualified men and women. I think each of us who has experienced political life knows that there is always room for improvement in the quality of men who make our laws at the State and National level.

Mr. President, I ask unanimous consent that an article by Fred Buckles on this particular matter which appeared in the Albuquerque Journal of September 3, 1964, be printed at this point in my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

IN THE CAPITAL: NEW MEXICO'S SENATORIAL IMBALANCE IS FOURTH GREATEST IN NATION

(By Fred Buckles)

SANTA FE.—New Mexico's State senatorial districts—each county is a district—have the fourth greatest population imbalance in the Nation.

Attacked in a U.S. District Court suit in Albuquerque, the present State senate apportionment is highly vulnerable for this reason.

New Mexico is 1 of 10 States in which less than 20 percent of the population can elect a majority of the senate.

Only 14 percent of New Mexico's population chooses a majority of the senate. The percentage is lower only in: Nevada, 8 percent; California, 10.7 percent; and Arizona, 12.8 percent.

Less than 20 percent of the voters can also pick a majority of the senate in: Maryland, 14.2 percent; Florida, 15.2 percent; Rhode Island, 18.1 percent; New Jersey, 19 percent; Idaho, 16.6 percent; and Montana, 16.1 percent.

The pending court action was filed in Albuquerque by two women Democratic candidates for the State house of representaties—Mrs. Imogene Lindsay in district 17 and Mrs. Mary E. Beauchamp in district 11.

Their move could easily strengthen their chances for election in Bernalillo County with the general election November 3 less than 9 weeks away.

UNDERREPRESENTED

On a population basis, Bernalillo County is the most underrepresented county in the State in the senate by a wide margin.

The imbalance is 140 to 1 between Bernalillo County and Harding County on the basis of the 1960 Federal census. Bernalillo County had a 1960 population of 262,199 and Harding County's census was 1874.

Each county is represented by one senator in Santa Fe.

The imbalance is 95 to 1 between Bernalillo and Catron counties on the 1960 census. Catron's population 4 years ago was 2,773. The ratio is 81 to 1 between Bernalillo and De Baca County which had 2,991 population in 1960.

The imbalance is steadily growing between populous Bernalillo County and the sparsely settled counties of New Mexico.

The Bureau of Business Research of the University of New Mexico estimated Bernalillo County's population in 1963 at 287,200. The bureau estimated populations of lightly settled counties as follows—Harding, 1,900; Catron, 3,000; De Baca, 2,700; Hidalgo, 5,000; Guadalupe, 5,900; Mora, 5,700; Union, 6,100; Torrance, 6,300; Sierra, 7,000; and Lincoln, 8,000.

Attorney General Earl Hartley said this week the State will ask the U.S. district court to stay action on the Senate reapportionment suit until the 1965 legislature meets and considers reapportionment.

Hartley accepted service of the Federal suit early this week for the four State defendants—himself and the State Canvassing Board composed of Gov. Jack M. Campbell, Secretary of State Alberta Miller and Chief Justice J. C. Compton of the supreme court.

TO CITE DECISION

Hartley said the State's answer which will be filed in 20 to 30 days will cite part of the historic decision of the U.S. Supreme Court on reapportionment issued June 15.

Chief Justice Earl Warren said in the majority opinion, "Under certain circumstances such as where a pending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the time of immediate, effective relief in a legislative apportionment case even though the existing apportionment scheme was found invalid."

Hartley said, "I don't think anyone will think that the (U.S. district) court's going to hear the suit before the legislature meets and has a chance to act."

Soon after the U.S. Supreme Court held both houses of State legislatures should be apportioned as nearly as practicable on a population basis Governor Campbell and First Assistant Attorney General Boston Witt announced the ticklish subject of apportionment would be left to the 1965 legislature.

Witt said then the State would immediately move to stay action on any reapportionment suit filed before the legislature meets.

Based on the present 32-seat Senate Bernalillo County would get about 11 seats, or more than one-third of the total, if reapportionment was enacted strictly on the basis of population.

The chances that this will occur in the 1965 session are remote. Senators representing sparsely settled counties, including some of the most powerful figures in the legislature, are strongly opposed to a reapportionment of the senate in the session starting January 12.

Mr. ANDERSON. Mr. Buckles, the Santa Fe correspondent of the Albuquerque Journal, is a newspaperman of long experience. I am particularly gratified to see the article which he wrote on the subject.

If time were acting to remedy this problem in the States, then I would say let us wait and over a period of a few years without any action by the Federal courts or by State legislatures equity would be achieved. I know by experience in my own State that time is not on the side of equity.

In 1950, 16 counties with a population of 145,475 had 16 senators and Bernalillo County, the most highly populated county, had 145,673 and it had 1 senator.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. ANDERSON. I yield.

Mr. DOUGLAS. May we have those figures? The Senator said that 16 counties with a population of 145,000——

Mr. ANDERSON. One hundred and forty-five thousand four hundred and seventy-five, had 16 Senators, and Bernalillo County, with a little bit more than that, had 1 Senator.

Mr. DOUGLAS. So the average person in those 16 counties would have 16 times the representation that a citizen in the county in which Albuquerque is located would have.

Mr. ANDERSON. Yes. They went back to that old political formula of 16 to 1.

Mr. DOUGLAS. Yes, that was Bryan's cry.

Mr. ANDERSON. But I should like to call the Senate's attention also to the fact that by 1960, 22 counties with 255,469 people had 22 senators and Bernalillo County with 262,199 people had 1 senator.

Mr. DOUGLAS. The ratio is 22 to 1.

Mr. ANDERSON. The ratio is 22 to 1 and going in a very bad direction.

Mr. DOUGLAS. As of 1965 does the Senator think that it might be 25 to 1?

Mr. ANDERSON. It is moving in that direction. I suppose it might be 23 or 24 to 1 by the time of the next census.

By 1960, 22 counties with 255,469 people had 22 senators and Bernalillo County with 262,199 people had 1 senator. So that the ratio in 1950 of 16 senators from the 16 smallest counties to 1 senator from the largest county had changed in 1960 to 22 senators from the 22 smallest counties to one senator from the largest county. And it is interesting, too, Mr. President, that of the 22 counties with the smallest population in 1960, 16 of them had lost population between 1950 and 1960—one of them, Harding, losing more than one-third of its population while Bernalillo experienced an 80 percent gain in population with no change in its representation in the State senate.

Now I say that time is not going to solve our problem, because the projections for the mid-1970's period show that 23 counties with a population of 386,970 will have 23 senators if the present arrangement goes unchanged. Assuming no change is made in present apportionment, Bernalillo County would have a population of 416,830 and still have 1 senator.

Time will not cure this.

So that in 25 years this imbalance will have gone from 16 to 1 to 23 to 1.

In truth, Mr. President, the equity in legislative apportionment was greater in 1910 than it is today. In 1910, Bernalillo County, then as today, the largest county in population, had 23,306 people. The house of representatives and the senate districts at that time were based to a degree on population, and Bernalillo County had 3 seats in the house and 1⅓ seats in the senate. Guadalupe County in 1910 had a population of 10,927 and it had 1⅚ seats in the house and one-half seat in the senate. Fifty years later, Bernalillo had 262,199 people and 9 members in the house, but only 1 member in the senate. Its population had increased 1,029 percent. Guadalupe County, on the other hand, had had about a 50-percent decline in those 50 years and its population in 1960 was down to 5,610. Yet it had one member of the house and one member of the senate. To sum up, Bernalillo County had lost a measure of representation in the senate while Guadalupe gained; and while Bernallillo County increased its representation in the house, Guadalupe saw its representation in the house decline hardly at all. By last year Guadalupe County had 0.59 percent of the State population and Bernalillo 28.68 percent of the State population. But one would never realize if he were simply to look at the representational system in Santa Fe.

In referring to Bernalillo County and the inequity of its representation in the State legislature, I do not mean to imply that Albuquerque, the principal city in Bernalillo County, is the only urban area in the State which is on the short end of equitable representation. In 1960 Roswell, the second largest city in the State, had 39,593 residents. Mr. President, 25 individual counties—each with 1 senator—had less population than the city of Roswell. And Roswell had to share its State senator with the rest of Chaves County. Santa Fe, the State capital, had a population of 33,394, according to the 1960 census, and 22 counties each had less individual population than the city of Santa Fe, and 21 counties in 1960 had less population each than the fourth largest city in the State, Las Cruces.

Mr. President, I ask unanimous consent that three tables which show the inequities of the senatorial apportionment in New Mexico be printed at this point in my remarks.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

Counties ranked in order of population, 1950 census

	Population
Harding	3,013
De Baca	3,464
Catron	3,533
Hidalgo	5,095
Guadalupe	6,772
Sierra	7,186
Union	7,372
Lincoln	7,409
Mora	8,720
Luna	8,753
Socorro	9,670
(Los Alamos)	[1] 10,746
San Juan	12,438
Quay	13,971
Otero	14,909
Roosevelt	16,409
Colfax	16,761

Sixteen counties, 145,475 population, 16 senators. One county, Bernalillo, 145,673, 1 senator.

[1] Los Alamos did not have a senator in 1950. Not included in total of 145,475.

Counties ranked in order of population, 1960 census

County	Percentage loss ( ) or gain of population 1950–60	Population 1960
Harding	(37.8)	1,874
Catron	(21.5)	2,773
De Baca	(13.7)	2,991
Hidalgo	(2.6)	4,961
Guadalupe	(17.2)	5,610
Mora	(30.9)	6,028
Union	(17.7)	6,068
Sierra	(10.8)	6,409
Torrance	(18.9)	6,497
Lincoln	4.5	7,744
Luna	12.4	9,839
Socorro	5.1	10,168
Quay	(12.1)	12,279
Los Alamos	24.4	13,037
Colfax	(17.6)	13,806
Sandoval	14.2	14,201
Taos	(7.1)	15,934
Roosevelt	(1.3)	16,198
Grant	(13.6)	18,700
San Miguel	(11.5)	23,468
Rio Arriba	(3.2)	24,193
Curry	40.0	32,691

22 counties, 255,469 population, 22 senators. 1 county, Bernalillo, 262,199 population, 1 senator. Bernalillo, 80. 6 counties showed gain 1950–60, 18 showed loss in population.

Mid-1970 projection—Counties ranked in order of population

	Population
Harding	2,270
Catron	3,080
De Baca	3,290
Guadalupe	5,390
Hidalgo	6,100
Sierra	6,330
Mora	7,100

Mid-1970 projection—Counties ranked in order of population—Continued

	Population
Union	7,550
Lincoln	8,590
Torrance	8,680
Luna	13,040
Socorro	13,440
Quay	13,530
Los Alamos	14,600
Taos	19,010
Colfax	19,290
Roosevelt	20,240
Grant	22,260
Sandoval	24,420
San Miguel	30,190
Rio Arriba	34,580
Curry	46,330
McKinley	57,660

Twenty-three counties, 386,970 population, 23 senators. One county, Bernalillo, 416,820 population, 1 senator.

Mr. ANDERSON. Mr. President, the first table shows the counties ranked in order of population according to the 1950 census. It shows that 16 counties with a population of 145,475 have 16 senators, while 1 county, Bernalillo, with a population of 145,673, has only 1 senator.

The next table is a table of the counties ranked in order of population according to the 1960 census. It shows the situation with respect to the counties.

The third table is a table of the counties ranked in order of population on a mid-1970 projection. It shows that 23 counties with a population of 386,970 will have 23 senators, and 1 county, Bernalillo, with a population of 416,820, will have 1 senator.

Another way to view this situation is on the basis of tax revenue. In July of 1964, Bernalillo County paid 30.53 percent of the State school taxes, which is the largest single tax source in the State. Guadalupe County paid 0.6 percent of these taxes, and there were counties that paid even less. I use Guadalupe County only because I have used it in previous references and because counties even smaller in population were not established as counties in 1910, the period of my comparison. If one looks at the assessed valuation of counties in New Mexico, Bernalillo has an assessed valuation of $188.5 million, while Guadalupe has $9.7 million and other counties had even smaller assessed valuations.

My remarks should not be interpreted to mean that I believe that a county's representation in the State legislature should be based on the amount of taxes it contributes. This argument was resolved by the Founding Fathers when they determined that taxes returned by the States to the Federal Treasury should not be the basis of representation in the House, but that population should be. Nor do I believe that the county that contributes the largest amount of funds should receive the greatest amount from the State. Those that have the revenue capability should be willing, and indeed have been willing, to support the needs of the less financially able counties.

One element of the changing and social economic character of our country is the automobile and its rapidly increasing numbers. In New Mexico tourism has become a major industry—an industry unheard of at the time of statehood

and perhaps unappreciated when inequitable distribution of legislative seats was made part of our State constitution. As a result of rural dominance, the New Mexico State Legislature passed an antibypass law. This law has slowed down the interstate program in the State and has given a veto power to many small communities all out of proportion to their size and position of influence in the State. Yet traffic flow has a major bearing on the economy of the State and its economic growth, and this fact is dramatized by the 72 percent increase between 1952 and 1962 in the number of passenger cars registered in New Mexico. This is one of the largest increases in any State in the Union. Yet we find small towns and sparsely populated counties hamstringing plans for effective highway needs.

Why is it that our State cannot get rid of that law? I will give Senators a hint: The Bernalillo County senator might vote to do so, but these less populous counties with less total people than the lone county of Bernalillo have 22 votes out of 32 votes in our State senate. They have control—and that control the Dirksen amendment seeks to continue, world without end.

Our Founding Fathers and framers of the great American Constitution viewed their handiwork as a historic and noble experiment in unifying all citizens of the several States under a Central Government of law and not of men. The right of the judiciary to rule on constitutional questions was so implicit in the opinion of the framers of the Constitution that they saw no need to include specific language in the Constitution to confer upon the judiciary that authority. The point was debated and resolved during the discussion of the idea to create a Council of Revision which would include the judiciary and the executive departments of Government.

The framers of the Constitution had a great dream of creating a union which would withstand the test of time, adversities, and internal differences of opinion. It was a dream which is still in process of fulfillment. To strip or limit the Supreme Court by an act of Congress of the authority to rule on constitutional questions may set back this Nation's fulfillment of this dream.

From the very beginning this Union has been the envy of European countries which had for centuries been trying through various schemes to unify people of different backgrounds into a monolithic group, without violating their political heritage or individual rights. The American Constitution has already succeeded in doing so to a great degree and will continue to succeed beyond the fondest dreams of its authors. Let not one branch of Government be the cause of its faltering along in its dedicated course.

Mr. President, for the philosophical and practical reasons I have stated this afternoon, I intend to vote against cloture.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. ANDERSON. I am happy to yield.

Mr. DOUGLAS. I commend the Senator from New Mexico for the very able speech which he has delivered, and which will have a great effect on the vote tomorrow, and on any subsequent votes which may occur.

The Senator has given pungent testimony from his own State showing the way in which the metropolitan district of Albuquerque—and I assume also of Santa Fe, Roswell, and other cities—has been hamstrung by the overrepresentation of the sparsely settled counties which are sometimes referred to by those who do not live in New Mexico as sagebrush counties, and the effect that this has had on such a simple matter as transportation. He has cast the whole issue in a larger frame as well. I thank the Senator for his excellent contribution. I hope it will be studied carefully by Members of the Senate. I am sure it will have great effect. I congratulate him.

Mr. ANDERSON. I thank the Senator for his kind remarks. One of the reasons why I have spent some time on this matter is that I have been interested in the growth in our part of the country. I was forced to go to New Mexico. It was not a question of wisdom on my part that I went there, but I was fortunate in being forced to go there. I went there for another reason than choice. I landed in a region that has been growing and growing rapidly. One could hardly make a mistake in Albuquerque. One might pay too much for property, but all he had to do was hold on a little longer, because its value has been constantly growing.

The parts of our country that have been growing the fastest—and one can consult the charts—are Nevada, California, Arizona, New Mexico, and Florida. Those are the States which are most sharply out of balance so far as their representation in the senates of those States is concerned. The reason for it is that there has been a vigorous growth, and they have been unable to correct the imbalance. If anyone had stood up in the legislature of my State and tried to reapportion, he would have been voted down, because those who have the control do not want to give it up.

Mr. DOUGLAS. How long has it been since the scheme of representation in New Mexico has been in effect?

Mr. ANDERSON. If one wants to go back to the beginning—I went to New Mexico in 1917—the district of San Miguel had three senators. There was one senator from San Miguel County, and one senator from Mora County and San Miguel, and one senator from Guadalupe County and San Miguel.

Guadalupe and Mora, being small counties, had no control over the three.

All this was based on the State constitution we adopted in 1912.

Mr. DOUGLAS. Has that situation been revised?

Mr. ANDERSON. No.

Mr. DOUGLAS. It has remained the same for more than 50 years?

Mr. ANDERSON. I should say that some changes have been made. A change has been made to provide each county with one senator. Therefore San Miguel County no longer has three senators, one direct and two by proxy. It now has one senator.

Mr. DOUGLAS. No allowance has been made for the development of the cities. Is that correct?

Mr. ANDERSON. The Senator is correct. Bernalillo County, with its population, does not have anywhere near enough representation. I do not say that the apportionment must be done entirely on a population basis. However, in order to have a State government that is responsive to the needs of the people of the State, there must be some flexibility.

Mr. DOUGLAS. Is the lower house much better from the apportionment standpoint?

Mr. ANDERSON. The lower house is somewhat better. An attempt was made to reapportion through the legislature. The legislature struggled with the problem, and finally it was brought into court. It was said, "Let the court decide it." The court laid down some rules. This was done by one of our Republican judges—and I should not say it was done on a partisan basis. He laid down the basis, and the legislature tried to go on from there. When they were through, they were in such a mess that the court had to throw it out again on the ground that it was unconstitutional. But a change was approved to make for a more equitable situation in the House starting next January.

Mr. METCALF. Mr. President, will the Senator yield?

Mr. ANDERSON. I yield.

Mr. METCALF. The Senator from New Mexico has made a fine speech, and in making it he has added to the evidence that is piling up which shows the need for reapportionment in every State of the United States.

Yesterday I pointed out that historically the State of Montana has been malapportioned deliberately against the warnings of a great Governor of the State of Montana, who said that we were violating the Constitution of the United States and had been doing so for 75 years.

The same thing has happened in State after State.

The speech of the Senator from New Mexico has added to this accumulating evidence, which shows that this subject must be taken care of at the present time. The only remedy we have is through the Supreme Court.

Mr. ANDERSON. Recently I picked up a copy of the New York Times of August 16. On one page it shows the State of Michigan and how the districts had been allocated. They were not in equal balance. On the opposite page the Times shows the new districts. The population of the districts is shown as being withon 1 percent of each other. Certainly an equitable job was done there. If this can be done in Michigan, it can be done in New Mexico and in every other State of the Union. I hope it will be done.

Mr. METCALF. Another significant contribution that the Senator from New Mexico has made is that when we have properly apportioned legislatures the States will begin to play a proper part

in the government—in the Federal, State and local governments—and to bear their fair share of the burdens that we have had to take care of because of the dereliction of the States.

Mr. ANDERSON. Yes. Returning to my home county, in that county there is located the Sandia Corp., which is a Government-owned corporation—although there is some question about that—in which the stock is held by the Western Electric, a part of the American Telegraph & Telegraph Co. The individuals in this corporation are far above the average. They are fine people, and we have the benefit in our community of their wonderful presence. However, those people cannot vote—at least not to the same extent that other people in the State can vote in the sense of representation in the State senate. I would very much like to have full weight given to the vote of these people. That is all we ask.

Mr. METCALF. That is all we seek.

Mr. JAVITS. Mr. President, the real argument between the contending parties in the reapportionment issue is as much the power of the Supreme Court as it is apportionment itself.

A number of recent decisions, including the reapportionment decisions, the school prayer decisions, and the Brown decision on public school desegregation, have raised, with the intensity in which it existed in the time of Chief Justice Marshall, in the time of Chief Justice Taney, and in President Jackson's time, the issue of whether the Supreme Court shall have the power to construe the Constitution and implement its decisions as an independent third branch of our Federal Government.

Personally, I would deplore greatly in our national society a confrontation between Congress and the Supreme Court. I believe it must be and should be avoided by all who love the nature of our society and its constitutional system of checks and balance. It is in order to contribute to that end that I make this statement today.

Mr. President, for the first time in my Senate career I shall vote against cloture tomorrow on the pending Dirksen-Mansfield reapportionment stay amendment to the foreign aid bill. I am not voting for cloture now because I do not believe that, by Senate standards, those who oppose this amendment have had adequate time to debate it. I reserve the right to vote for cloture if a cloture motion on this amendment comes up again.

The opponents of the Civil Rights Act of 1964, it should be remembered, took 17 days to discuss the preliminary motion to make the bill the pending business. Then they were permitted more than 2 months of so-called educational debate on the bill itself before cloture was invoked on June 8 of this year.

In 1962 the opponents of the communications satellite bill were given 16 days to debate that measure before cloture was invoked against them.

Mr. President, we all know that it is rather the fashion in this body, with respect to filibusters, to treat conservatives much more kindly than liberals. This is, perhaps, an opportunity to right the balance. Even assuming that liberals are held to much more stringent standards than are conservatives—and there may be something to that, in view of the fact that liberals are fighting against filibusters and against rules that permit filibusters, while conservatives like them, and perhaps therefore we should practice more ardently what we preach than we ask of the others—those who oppose the Dirksen-Mansfield amendment will have had 6 days of debate out of a potential 9 days, several of which were consumed in debate on other matters. That is even less time than the short-term communications satellite debate in which the liberals were permitted to engage in 1962—and many of those liberals are now engaged in the present debate—and certainly it does not bear the remotest comparison to what we accepted as fair in the case of those conservatives who set themselves against the civil rights bill of 1964.

Therefore, I believe that the proper vote on the cloture motion is "nay."

I have consistently taken the position that the majority should have the opportunity to work its will in the Senate, as it does in every other parliamentary body in the world; but I have also sought to insure that there will be adequate opportunity for the minority to make its views known in debate. The proposal for amending the filibuster rule, rule XXII, which I have consistently supported, would permit an estimated 4 to 6 weeks of debate before a constitutional majority of Senators could finally invoke cloture.

The distinguished senior Senator from Illinois [Mr. DOUGLAS], who is in the Chamber today, is the author of that particular proposal, which I have supported on a number of occasions in our struggles in the Senate. I also had the honor, together with the Senator from Georgia [Mr. TALMADGE], to be a member of the rather famous two-man subcommittee which dealt with the question of rule XXII when I was a member of the Committee on Rules and Administration.

I can see no sound reason for imposing stricter debate limitations on the pending amendment than in other recent cases, particularly when the proponents of the amendment have themselves used the Senate rules to seek to append a highly controversial, nongermane amendment to a crucial annual foreign policy bill, the foreign aid authorization bill—a bill which we all know the President cannot veto—in the closing weeks of the session. So I do not believe we can have one side posing as a model of virtue while enforcing against the other side an unusually strict limitation of debate.

On the merits of reapportionment, I have said before that I am opposed to the Dirksen-Mansfield amendment in its present form. My position in this case is a middle position. Although I am not always found in that part of the road in respect to controversial questions, I find myself there now. I have long believed that there is a need for fairer representation of some of our urban and suburban areas, which have been disadvantaged by apportionment which was esablished when our Nation was less centralized in urban areas than it now is.

But I believe that some of the lower Federal court decisions purporting to implement the Supreme Court's one-man, one-vote decision of June 22 have been pressing State legislative reapportionment too rapidly, in the light of some States' electoral procedures. My own State of New York has a particularly acute case. There, a three-judge Federal court has ordered three elections in 2 years, with State senators and assemblymen serving for only 1-year terms instead of the 2-year terms prescribed by the State constitution. The Speaker of the New York State Assembly, Joseph F. Carlino, warned during the past weekend, that this would produce a "virtual legislative stalemate" in the legislature because of the practical inability to enact new revenue measures in election years. I fully agree with him that this is quite likely to occur.

Similarly in Vermont, a lower court has ordered the legislature to meet only for the purpose of reapportioning the State legislature, and then to disband without transacting further business. This is a most drastic injunction, one that is hardly compatible even with the dignity of a State.

I respectfully submit that the lower Federal courts, unless corrected by the Supreme Court, may produce a climate in Congress which, in my judgment, will be most inimical to the ultimate implementation of the decision of the Court itself and strongly against the national interest. Yet such a climate could be produced. I do not believe I would be touched by it, but I believe that others might.

The time has come for the lower Federal courts to understand two things: First, that every act that is adopted by a legislature, notwithstanding the fact that the legislature is malapportioned, is legal. This is not a case in which legislatures are acting illegally, and in which the Supreme Court has to hasten to shut down the business of a legislature because all of its acts are a nullity. That is nonsense. In my judgment as a lawyer—and I think it is borne out by the cases—the Supreme Court will hold that every one of the acts of any State legislature, no matter how malapportioned the legislature may be, is legal.

Under these circumstances, such drastic injunctions as requiring 1-year terms or forbidding legislatures to do anything except to meet and reapportion are hardly compatible with the dignity of the States. I would urge the Supreme Court, whatever may happen with respect to this proposed legislation, to pay particular and strict attention to what is said on this subject in the interests of the Nation and of the Court's own future and the future of the balance of powers between the legislature and the judiciary.

Haste of the kind which I have described might have been warranted if there were any danger that the acts of malapportioned legislatures might be

considered per se invalid. But it is unthinkable that the Supreme Court would so hold; in fact, those Courts which have faced this issue since the decision in Baker against Carr, in 1962—the basic decision on this subject—have uniformly held to the contrary; namely, that the acts of a malapportioned legislature are and continue to be valid.

In addition, I believe it must be said that there may be a case for an amendment to the U.S. Constitution, if it is limited only to permitting the people of any State, if they wish it, to choose by referendum to have one house of their legislature apportioned with reference to a factor other than population. Such a proposal has been introduced in the other body by Representative McCULLOCH, of Ohio; and I shall sponsor it in the Senate.

Along that line, the constitutional amendment proposed by the junior Senator from Illinois [Mr. DIRKSEN] has perhaps caused more difficulty than the Dirksen amendment to the foreign aid bill. The proposed Dirksen constitutional amendment would purport to do two things:

First. It would cut off the power of the Supreme Court in respect to apportionment cases. I thoroughly disagree with that. The Supreme Court should continue to have that power.

Second. It would put it within the possibility—and I emphasize the word "possibility"—of a State legislature, once the constitutional amendment were adopted, to reapportion without the action being subject to scrutiny and consideration either by the Supreme Court of the United States as to the fairness of that reapportionment or even by the citizens of that State in a referendum. I do not believe that is right.

One of the houses in every State legislature should be apportioned strictly on the basis of one man, one vote, but the people of that State should have the right to make some compact among themselves as to the apportionment of the second house, as has been made by the United States. There may be different historical reasons, but the idea of a Senate not necessarily based on population is now so thoroughly ingrained in the American public consciousness that I believe it would be difficult to convince people that it is fair to insist that both houses of a State legislature must be based strictly upon population, if—and it is a big "if"—the people of that State do not prefer it that way as to one house.

It seems to me that the concept of the United States, namely, that one house is based solely on population, is a sound one. Let us remember that the whole constitutional system is based upon the premise that the American people can rise in their might and power in 2 years—a very short period of time—and stop all the machinery of government, if they choose, by electing Members of the House of Representatives who, for example, will not vote a nickle for any government department. That is their privilege. That is all right. That is the way it should be, according to our concept of government.

The question, then, is how Congress may constitutionally manifest its desire for time to avoid hasty solutions and perhaps to propose a constitutional amendment. I do not believe the Dirksen-Mansfield amendment can do so validly under the doctrine of the separation of powers of the coordinate branches of the Federal Government unless the Court construes it as a request, not an order. I have heretofore argued that in my judgment, the Supreme Court will strike down the Dirksen-Mansfield amendment unless it construes the words "unusual circumstances," as contained in the amendment, to allow it, for all practical purposes, to consider that amendment as a request, not an order. That is a dangerous piece of business. The Court may feel constrained, as a matter of morality in the construction of the law, to hold that this is an order to the Court, and to strike it down, and face the terrible confrontation between Congress and the Court, which I do not believe anyone who loves our country and its institutions should invite. If the amendment is mandatory, if it is a statute, then it could well be construed as an attempt by Congress to impose upon the Federal courts what is called, in words of art, "a rule of decision." This has been held invalid in cases involving constitutional rights already pending before the courts. I have argued on the floor of the Senate the famous McCardle case. There is a great likelihood, in view of the later Klein and Glidden cases, that the McCardle decision is unlikley to be the law of the land as construed by the Supreme Court at this time. It is for these reasons that I wish to avoid this confrontation.

To give us the time which I believe is properly needed for the dignity and efficiency of our system of government, the Senator from Minnesota [Mr. McCARTHY] and I have introduced a "sense of Congress" resolution, requesting the Supreme Court that adequate time be given to comply with the Supreme Court's decision consistent with each State's electoral process and with its procedures for amending its constitution; and also to afford time for consideration of a proposed amendment to the Constitution along the lines which I have described.

Mr. METCALF. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. METCALF. I know that the Senator from New York has pointed out the series of cases. Especially, I am referring to Reynolds against Sims. Throughout the cases, there is the business of the Supreme Court saying that these cases will be cited on a case-by-case basis, and that there will be time, that there will be not mathematical precision but as much precision as is practicable. It would seem to me that this case-by-case approach would be much more effective than any approach we could make generally.

Mr. JAVITS. Let me say to the Senator from Montana that the Court originally laid down a strict standard as to what malapportionment would be obnoxious to justice. The Senator from Montana will remember that. I believe it is, in words of art——

Mr. METCALF. Invidious.

Mr. JAVITS. Invidious—exactly right.

The Court ratified that to mean one man, one vote. What happened is that the lower courts picked up that ball and ran with it harder, faster, and more drastically than anyone expected. We do not yet know what the Supreme Court would say about the lower court orders. For example, in New York, the order of the three-judge court, with all respect and dignity, is being appealed to the U.S. Supreme Court. Other cases will come up in the same way, but I believe that on a question of this great importance to the people of each State, it would be appropriate to evidence congressional intent that the people be given an opportunity to absorb this question, and that the Congress be given an opportunity to deal with it in some fashion by a constitutional amendment. It seems to me that there is not too much difference in this approach from the many cases which the Senator from Montana, who is learned in the law, has read, in which the Court has stated, "We are deciding that such and such a thing is unconstitutional and, of course, it can be changed so that it is constitutional."

The Court does not hesitate to lay down the responsibility upon us, in just so many words, when it believes it is deserved. I believe that although it may be somewhat novel, it is not unusual in the sense that it is only reciprocal for us to lay our feelings at the door of the Court and, as the Senator from Minnesota [Mr. McCARTHY] and I have suggested, say, "We intended to propose a constitutional amendment. There is a likelihood that we shall. We ask you, as a coordinate branch of the Government—just as you ask us many times to correct something in the law—to exercise a little moderation in this process and give us an opportunity to act in good faith."

Mr. METCALF. I have listened to what the Senator from New York has just stated. I agree that it is within the constitutional right of Congress to make such a request to another coordinate branch of the Government. Yesterday, I tried to point out that there is a great deal of difference between what we did and what was attempted to be done in the 85th Congress to change the statutory interpretation, and in changing the construction of legislation involving the invasion of an individual constitutional right. The proposed legislation before us now, we are told, would suspend an individual constitutional right. I agree with the Senator from New York that it would be an absolutely unconstitutional act, and would be a violation of a basic right of the separation of powers.

I feel that the Supreme Court is correct, but I would much prefer to vote for some such approach as the Senator from New York and the Senator from Minnesota have suggested than to vote for a completely unconstitutional act. We would at least demonstrate that we

respect a coordinate branch of the Government of the United States. The Senator is suggesting an approach which is at least within the bounds of the Constitution and within the traditions of our American constitutional government.

Mr. JAVITS. I value very highly the favorable views of the Senator from Montana [Mr. METCALF]. I know that he comments as an honest and studious lawyer on the approach which has been suggested.

I believe we are facing a rather grave potential confrontation between the Supreme Court and Congress. I believe that it behooves all who love our system of government to use not only their ingenuity but also their patience and forbearance in such a situation, to see whether the practical result which we all seek—the Senator from Illinois [Mr. DIRKSEN], the Senator from Montana [Mr. MANSFIELD], the Senator from Illinois [Mr. DOUGLAS], the Senator from Montana [Mr. METCALF]—can be achieved without this confrontation.

Incidentally, this suggestion was originally Senator McCARTHY'S suggestion. I told him that I should like very much to join him in carrying it out, and in his typical modesty he insisted that I should introduce it and that he would join with me. But it was originally a McCarthy suggestion.

This approach is expressly designed to give Senators like myself, who do not wish this confrontation, who wish to avoid the confrontation, and who believe it can be avoided, an opportunity to support an approach which would allow things to cool off a bit on this subject, and not endeavor to have a confrontation on constitutional powers which, in my judgment, could only be serious to the Nation.

Mr. METCALF. I am delighted to know that at least my good friend and good lawyer, the Senator from New York, agrees that we must avoid the grave constitutional crisis which this issue brings up—the confrontation which we are talking about between two separate and coordinate branches of the Government.

Mr. DOUGLAS. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. DOUGLAS. The Senator from New York has heartended us all very much by certain passages in his speech. I believe that he has driven another nail into what we hope will be the coffin of the Dirksen amendment to the foreign aid bill. For that, we are very grateful.

I take it, though, that he somewhat skirts the issue that he does not wish a constitutional amendment which would permanently prevent the Supreme Court from passing upon reapportionment measures. There is room for consideration in the other questions he raises.

In conjunction with the able address made by the Senator from New Mexico [Mr. ANDERSON], the Senator from New York has given great heart to all of us about the vote tomorrow.

I can only hope that Senators who may attempt to be absent tomorrow will come into the Chamber, so that the cloture motion may be defeated by a very large margin.

Again, I thank the Senator from New York.

Mr. JAVITS. I thank the Senator from Illinois for his helpful intercession.

Mr. President, I yield the floor.

Mr. RANDOLPH. Mr. President, I now yield to the Senator from Montana, with the understanding that I shall retain my rights to the floor.

The PRESIDING OFFICER (Mr. BREWSTER in the chair). Without objection, it is so ordered.

ECONOMIC DEVELOPMENT PROGRAMS FOR DEVELOPMENT OF THE APPALACHIAN REGION

The Senate resumed the consideration of the bill (S. 2782) to provide public works and economic development programs and the planning and coordination needed to assist in the development of the Appalachian region.

Mr. METCALF. Mr. President, I have taken this time for the purpose of calling up my amendment, No. 1264, which has already been read by the clerk.

When the bill was heard in committee, the Secretary of Agriculture, Mr. Freeman, testified in support of the general bill. I am proud to be a cosponsor of the proposed legislation. As a Senator from the West, I appreciate the many things which Congress has done for us. The only thing "West" about this bill is that West Virginia is included. But we have benefited in the western part of the United States from such general legislation as that of the Bureau of Reclamation. The Corps of Engineers has worked in our State and throughout the West. We benefit from the Department of Agriculture, and the administration of the national forests. We benefit from having the national parks, and the tourist trade that is generated. We benefit from being a part of the United States, and from participating in and enjoying the benefits that develop from being part of the United States.

I am proud to reciprocate and be able to help another region enjoy the benefits of citizenship in the United States. I express to the Senator from West Virginia [Mr. RANDOLPH] and those from the Appalachian region the sentiment that we in Montana and in the West are proud of the opportunity to pay back some of the contributions that those in the Eastern and Midwestern States have made to the development of our region. It is a development which has meant a great deal to the development of the whole Nation, just as the development of the Appalachian region will make a similar contribution to the entire Nation.

When this bill came up and the hearings were held, I mentioned that Secretary Freeman appeared. He testified in support of section 203, which provides for pastureland improvement and development. At that time, the present Presiding Officer, the Senator from Maryland [Mr. BREWSTER] was present. The Senator from Hawaii [Mr. INOUYE] was present. I was present. We interrogated the Secretary of Agriculture sharply about how this pastureland subsidy would affect the price of beef.

As the Senator knows, the price of beef has deteriorated in the past 2 years. It has resulted from several things. There has been an increase in the number of cattlemen, in the size of the beef animals, and in the availability of other meat products. There has been an increase in the kind of domestic animals slaughtered and, of course, an increase in the imports.

The other day the Senate adopted an amendment originally sponsored by the senior Senator from Montana [Mr. MANSFIELD], the majority leader, which provided for a quota in the imports of beef. That will help to take care of the disastrous slump in beef prices that has resulted in the past 2 years.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. METCALF. I yield.

Mr. CURTIS. In order that I may properly understand the amendment of the Senator from Montana, what the Senator is proposing to do is strike out from the Appalachia bill the section which amounts to a subsidy for further pastureland.

Mr. METCALF. The Senator is correct.

Mr. CURTIS. I not only approve of that action, but my colleague, the senior Senator from Nebraska [Mr. HRUSKA], intended to propose a similar amendment. Naturally, every citizen of the United States has a right to expect that the Government should not offer a financial inducement to one citizen to provide additional unfair and burdensome competition for another citizen.

Mr. METCALF. The Senator from Nebraska is correct. I was trying to point out that on the one hand the Government is making a contribution in order to try to assist the cattle industry, as the Senator from Nebraska [Mr. CURTIS] has made a significant contribution to the passage of the Mansfield bill as a member of the Finance Committee. We not only established a quota for imports, but we tried to develop our foreign market. We increased the purchase of beef for the school lunch program. We increased the propaganda for the eating of beef, and on the other hand, on the pastureland provision, we are providing a subsidy to compete with the present beef producers.

Mr. CURTIS. Mr. President, I support the amendment of the distinguished Senator from Nebraska.

Mr. METCALF. When Secretary Freeman testified, he pointed out that there is a cycle in the development of beef and in the price of beef.

I assure the Senator from West Virginia [Mr. RANDOLPH] and my friends from the Appalachian region that when this cycle recurs—when the price of beef goes up and there is a shortage of beef animals—perhaps that might be the time to come forward with such a pastureland proposal. But at the present